

Joshua Lapin, Pro Se Plaintiff

401 E 8th ST
STE 214 PMB 7452
Sioux Falls SD 57103

Email: thehebrewhammerjosh@gmail.com

Facsimile: (605) 305-3464

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JOSHUA LAPIN

Plaintiff,

v.

NUTRISYSTEM, INC

DAVISON DESIGN & DEVELOPMENT INC

JOHN DOE AD NETWORK(S) 0-5

Defendant

) Case No.: 2:23-cv-01343-PD

) **PLAINTIFF JOSHUA LAPIN'S NOTICE**

) **OF DISMISSAL AS TO ALL CLAIMS**

) **AGAINST DEFENDANT NUTRISYSTEM**

) **INC WITH**

) **PREJUDICE PURSUANT TO FED. R. CIV.**

) **P. 41(a)(1)(a)(i), OR ALTERNATIVELY**

) **PURSUANT TO FED. R. CIV. P. 41(a)(1)(a)**

) **(ii)**

INTRODUCTION

COMES NOW Plaintiff Joshua Lapin, pro se, respectfully provides notice of dismissal as to all claims and causes of action against Defendant Nutrisystem Inc only under Rule P. 41(a)(1)(a)(i), and alternatively by consent of the relevant parties pursuant to P. 41(a)(1)(a)(ii), given the peculiar circumstances surrounding the same.

RIGHT TO REMAND IS NOT WAVIED, EXPRESSLY RESERVED

Plaintiff strongly believes, *inter alia*, that Ronald Hick's Removal is-and-was improper, that his purported "CAN-SPAM Preemption" defense falls under ordinary preemption and not complete preemption, and thus is insufficient for the purposes of Federal Question Jurisdiction pursuant to 28 U.S. Code § 1331, and that this case must be remanded. Therefore, to the extent that this plaintiff's dismissal as to all claims against Nutrisystem in this Federal Court *could* constitute waiver of his right to dispute the subject matter jurisdiction of this same court, or appear to be in direct contradiction, plaintiff hereby reserves his right to seek remand of this case, and that remand takes precedence over this dismissal of claims as to Defendant Nutrisystem Inc. Plaintiff files the instant motion as a courtesy to Defendant Nutrisystem, who rightfully expects to be dismissed from this matter.

History of [Failed] Dismissal of Nutrisystem Inc From This Matter

Plaintiff Joshua Lapin and Defendant Nutrisystem Inc confidentially resolved all disputes between them on March 27th 2023, in the Court of Common Pleas in Philadelphia, prior to removal to this court. On March 28th 2023, Plaintiff and Defendant Nutrisystem attempted to file a stipulated "discontinuance" [dismissal] as to all claims against Defendant Nutrisystem Inc, with prejudice, a true and correct copy of which is provided here as Exhibit A. However, the filing failed for minor, technical reasons, provided in the attached Exhibit B. The case was then removed prior to plaintiff's re-filing of the same.

NOTICE OF DISMISSAL PURSUANT TO FED R. CIV. P. 41(a)(1)(a)(i)

Without waiving his right to seek remand of this case, as described above, plaintiff hereby provides notice of dismissal as to all claims and causes of action, with prejudice, as to Defendant Nutrisystem only. "A circuit split exists on the question of whether a plaintiff must dismiss the entire action under Rule 41(a)(1)(A) or whether it can more surgically dismiss all claims

1 against one of multiple defendants. The First, Third, Fifth, Eighth, and Ninth Circuits form the
 2 majority in holding that ‘Rule 41(a)(1) allows a plaintiff to dismiss without a court order any
 3 defendant who has yet to serve an answer or a motion for summary judgment.’ ” *Van Leeuwen v.*
 4 *Bank of Am.*, N.A., No. 2:14-cv-00496 (D. Utah Feb. 25, 2015), quoting from *Pedrina v. Chun*,
 5 987 F.2d 608, 609 & n.1 (9th Cir. 1993) “Rule 41(a) provides a mechanism for a plaintiff to
 6 voluntarily dismiss an entire lawsuit, and this [3rd] Circuit also recognizes that the rule allows a
 7 party to voluntarily dismiss all of its claims against a particular party” *Noga v. Fulton Fin. Corp.*
 8 *Emp. Benefit Plan*, 19 F.4th 264 (3d Cir. 2021), quoting from *Young v. Wilky Carrier Corp.*, 150
 9 F.2d 764, 764 (3d Cir. 1945).” See also, “In an action with multiple defendants, voluntary dismissal
 10 of all claims against a single defendant is permitted under Rule 41(a); however, voluntary dismissal
 11 of some, but not all claims, against a single defendant is not permitted under Rule 41(a).” *Rosario v.*
 12 *Strawn*, Civil Action No. 2:19-cv-01040 (W.D. Pa. Sep. 30, 2020), quoting from *Chan v. Cty. of*
 13 *Lancaster*, No. 10-CV-03424, 2013 WL 2412168, at *16 (E.D. Pa. June 4, 2013). In the instant
 14 notice, plaintiff attempts dismissal of all claims against one party to the action, and NOT dismissal
 15 of some claims against one party, and therefore it is proper within the 3rd circuit’s interpretation of
 16 FED. R. CIV. P. 41(a)(1).

17 **Alternatively, NOTICE OF DISMISSAL PURSUANT TO FED R. CIV. P.**
 18 **41(a)(1)(a)(ii)**

19 As stated earlier, Plaintiff Joshua Lapin and Defendant Nutrisystem stipulated in writing to the
 20 dismissal of all causes of action against them, with prejudice, styled as a motion for leave to
 21 “discontinue” the claim against them (Exhibit A), in accordance to the then-applicable Pa.R.Civ.P.,
 22 and specifically its mechanism for seeking leave to “discontinue” a party pursuant to 231 PA.
 23 CODE § 229(b)(1). Also as stated earlier, the stipulated dismissal failed to file for minor, technical
 24 reasons (Exhibit B), and then the case was removed prior to plaintiff’s re-filing of that dismissal. In
 25 the alternative to plaintiff’s notice of dismissal as to claim against Defendant Nutrisystem, plaintiff
 26 prays that this court recognizes the state-court stipulated dismissal (Exhibit A), as one made
 27 pursuant to 41(a)(1)(a)(ii), and dismiss claims against Nutrisystem, with prejudice, accordingly.
 28 But in any event, right to dispute the subject matter jurisdiction of this court, and to seek remand of

1 this case, is not waived, expressly reserved, and takes priority over this notice of dismissal under
2 FED R. CIV. P. 41(a)(1)(a)(i) and/or (a)(ii).

3 **Certificate of Service**

4 This motion will be served onto counsel for all defendants as follows:

5 Renown Holdings Inc C/O Ronald Hicks, will be served through CM/ECF when plaintiff files this
6 notice through the Electronic Document System (EDS), which will cause the clerk to file it through
7 CM/ECF. Plaintiff respectfully reminds the court of his pending motion for leave to e-file through
8 CM/ECF directly, to, *inter alia*, avoid this duplicity.

9 Nutrisystem Inc C/O Ari Rothman 600 Massachusetts Avenue, NW, Washington, DC 20001

10 Davison Design & Development Inc C/O George Crompton 595 Alpha Drive · Pittsburgh PA
11 15238-2911.

12 Courtesy copies will be emailed to all council.

13 If plaintiff manages to serve defendants by electronic means, he reserves the right to do so in lieu of
14 first class mail at the address(es) listed above.
15

16 /s/ Joshua A. Lapin
17 Joshua A Lapin
18 Pro Se Plaintiff 4/14/23

19 _____
Signature

20
21 **[Exhibits Follow Signature]**
22
23
24
25
26
27
28

EXHIBIT

A

Joshua Lapin, Pro Se Plaintiff
401 E 8th ST
STE 214 PMB 7452
Sioux Falls SD 57103
Email: thehebrewhammerjosh@gmail.com
Facsimile: (605) 305-3464

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

Joshua Lapin)	Case No.: 230200202
Plaintiff,)	
vs.)	
Nutrisystem Inc)	PLAINTIFF JOSHUA LAPIN AND
Davison Design & Development Inc)	DEFENDANT NUTRISYSTEM INC.'s
Renown Holdings Inc)	STIPULATED MOTION FOR LEAVE TO
Defendants.)	DISCONTINUE THIS ACTION AS TO
)	DEFENDANT NUTRISYSTEM INC ONLY
)	PURSUANT TO 231 PA. CODE § 229(b)(1)

COME NOW, Plaintiff Joshua Lapin, pro se, and Defendant Nutrisystem Inc “Nutrisystem,” by and through its counsel Castell Abner, III, hereby stipulating to this motion for leave to enter a discontinuance of this action with prejudice as to Nutrisystem only. Plaintiff and Nutrisystem have resolved the disputes between them, and such resolutions have no bearing on the causes of action as to any party aside from Nutrisystem.

Certificate of Service

This motion will be served by e-mail as to part(ies) which have filed at least one prior legal paper pursuant to 231 Pa. Code § 205.4(g)(1)(ii), and by first-class mail as to part(ies) which have not yet filed a legal paper, unless such parties and the plaintiff “agree thereto” pursuant to the same rule.



Plaintiff Joshua Lapin, pro se

Signature

03 / 27 / 2023

Date

/s/ Castell Abner, III
Defendant Nutrisystem Inc

Castell Abner, III of Venable LLP

Signature

03/27/2023

Date

Title	Stipulated Motion To Discontinue Action as to NutriSystem
File name	Plaintiff Joshua ... Discontinue .pdf
Document ID	b7ac9e5a6c4cea677a3ceebbe33bc4455a7745dd
Audit trail date format	MM / DD / YYYY
Status	● Signed

Document History



SENT

03 / 28 / 2023

02:47:59 UTC

Sent for signature to Joshua Lapin
(thehebrewhammerjosh@gmail.com) from
thehebrewhammerjosh@gmail.com
IP: 66.231.5.58



VIEWED

03 / 28 / 2023

02:48:02 UTC

Viewed by Joshua Lapin (thehebrewhammerjosh@gmail.com)
IP: 66.231.5.58



SIGNED

03 / 28 / 2023

02:48:16 UTC

Signed by Joshua Lapin (thehebrewhammerjosh@gmail.com)
IP: 66.231.5.58



COMPLETED

03 / 28 / 2023

02:48:16 UTC

The document has been completed.

EXHIBIT

B



Joshua Lapin <thehebrewhammerjosh@gmail.com>

Rejection of your E-Filing #2303062113

1 message

cp-efiling@courts.phila.gov <cp-efiling@courts.phila.gov>
To: thehebrewhammerjosh@gmail.com

Tue, Mar 28, 2023 at 7:40 AM



Dear Joshua A. Lapin,

The legal paper you electronically presented for filing has been reviewed by the Office of Judicial Records and has been rejected for the following reasons:

1. DOCUMENT ATTACHED IS TITLED STIPULATED MOTION. IF YOU ARE FILING A STIPULATION, YOUR DOCUMENT WOULD NEED TO BE TITLED AS A STIPULATION AND SHOULD BE FILED UNDER THE STIPULATIONS SECTION. IF YOU ARE FILING A MOTION, YOU WOULD NEED TO FILE A MOTION UNDER THE MOTIONS SECTION OF THE EFILING SYSTEM. -- ISABELLA 215-686-6645

Please Note: Due to the fact that your pleading has not been accepted for filing, your credit card has NOT been charged. Your credit card is only charged when a pleading is accepted for filing.

This information is also available on the Civil, Criminal and Orphans' Electronic Filing System: log in to the EFS Web Site at <http://courts.phila.gov> using the Court-issued User Name and Password.

The following information is provided for your records:

Caption:
LAPIN VS NUTRISYSTEM INC ETAL
Case Number: 230200202

Date Presented to the Office of Judicial Records for Filing:
March 27, 2023 11:02 pm EDT/DST

Date Rejected:
March 28, 2023 09:40 EDT/DST

Type of Pleading/Legal Paper:
SETTLED BY STIPULATION

E-File No.: 2303062113
Confirmation No.: 4B5D2B631
Personal Reference No.:

THANK YOU,

ERIC FEDER
DEPUTY COURT ADMINISTRATOR
DIRECTOR, OFFICE OF JUDICIAL RECORDS

DISCLAIMER

 The First Judicial District will use your electronic mail address and other personal information only for purposes of Electronic Filing as authorized by Pa. R.C.P. 205.4 and Philadelphia Civil *Rule 205.4.

Use of the Electronic Filing System constitutes an acknowledgment that the user has read the Electronic Filing Rules and Disclaimer and agrees to comply with same.

This is an automated e-mail, please do not respond!

Notice of Language Rights



Language Access Coordinator

Land Title Building, 2nd Floor, 100 South Broad Street, Philadelphia, PA, 19110
 Elizabeth McCarrick: 215-683-8000; languageaccesscoordinator@courts.phila.gov

English: You have the right to an interpreter at no cost to you. To request an interpreter, please inform court staff using the contact information provided at the top of this notice.

Spanish/Español: Usted tiene derecho a un intérprete libre de costo. Para solicitar un intérprete favor de informárselo al personal judicial utilizando la información provista en la parte superior de este aviso.

Mandarin/Cantonese Simplified Chinese/普通话/粤语简体中文: 您有权获得免费的口译员服务。若需要口译员，请使用本通知上方提供的联系信息通知法院工作人员。

Russian/Русский: У вас есть право на бесплатные услуги переводчика. Заявка на переводчика подается в суд по адресу, телефону или эл. почте, указанным выше в заголовке этого уведомления.

Portuguese/Português: Você tem direito a um intérprete gratuitamente. Para solicitar um intérprete, informe à nossa equipe usando os dados de contato mostrados na parte superior deste aviso.

Haitian Creole/Kreyòl Ayisyen: Ou gen dwa resevwa sèvis yon entèprèt gratis. Pou mande pou yon entèprèt, tanpri fè manm pèsònèl tribinal la konnen lè ou sèvi avèk enfòmasyon an yo te bay ou nan tèt avi sa a.